

BEFORE LINDA McCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

KAREN M. WALLACE)	
)	
Appellant,)	OSPI 283-00
)	
vs.)	DECISION AND ORDER
)	
GLENDIVE SCHOOL DISTRICT)	
)	
Respondent.)	
)	

PROCEDURAL HISTORY

This is an appeal by Karen Wallace of a June 2, 2000, Order by the Dawson County Superintendent of Schools granting the Glendive School District's ("the District") motion to dismiss based on lack of jurisdiction of the County Superintendent to review a hiring decision of the District's Board of Trustees.

While employed by the District as a secretary at an elementary school, Ms. Wallace applied for a position with the District advertised as "Secretary to the Superintendent." She was not offered the position and she filed a grievance. Her grievance was based on her assertions that she met or exceeded the advertised job qualifications and that her scores on the typing and spelling test were higher than those of the applicant offered the job. Superintendent Dick Cameron denied her grievance and she appealed his decision to the Board. The Board reviewed the matter and denied her grievance.

Ms. Wallace then filed her grievance with the Dawson County Superintendent on May 4, 2000. On May 22, 2000, the Glendive School District filed a Motion to Dismiss and Memorandum in Support contending that the County Superintendent did not have jurisdiction to hear an appeal of

this matter. The County Superintendent granted the motion to dismiss on the grounds that a County Superintendent does not have jurisdiction to review a school district's hiring decisions.

Ms. Wallace appealed the County Superintendent's conclusion that she had no jurisdiction to the State Superintendent. Having reviewed the procedural record below and the parties' briefs, the State Superintendent issues the following Order.

DECISION AND ORDER

The June 2, 2000, Order of the Dawson County Superintendent granting the District's motion to dismiss is **AFFIRMED**.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. § 2-4-704 and adopted by the State Superintendent in Admin. R. Mont. §10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 277, 786 P.2d 1164, 1166 (1990) and Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990).

Granting a motion to dismiss based on lack of jurisdiction is a conclusion of law. On review, this Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 170 Mont. 296, 553 P.2d 407 (1976). Bland v. Libby School District No. 4, OSPI 205-92, 12 Ed. Law 76 (June 1993)

MEMORANDUM OPINION

Summary of the Undisputed Facts. Beginning in 1973, Ms. Wallace worked for the District as a secretary at an elementary school. In September 1999, she applied for a District non-certified staff position advertised as “Secretary to the Superintendent.” The job posting listed four minimum qualifications--“1) typing and spelling tests arranged by Job Service; 2) computer skills; 3) able to deal with public; 4) general office skills”--and included a detailed job description.

Ms. Wallace asserts that she met or exceeded the minimum qualifications listed on the job description and that she scored higher on the typing and spelling tests given by the Job Service. The District did not dispute that Ms. Wallace, who had worked for the District since 1973, satisfied the minimum qualifications listed in the District’s job description. The District would not release the typing and spelling scores of the person hired. Since a motion to dismiss should be considered with disfavor and reviewed on appeal from the perspective most favorable to the opposing party, for purposes of this appeal it is assumed that Ms. Wallace’s typing and spelling scores were higher.

Ms. Wallace was not offered the position. She filed a grievance as provided in the District’s “Uniform Grievance Procedure” (District Policy 5240P), which states in part:

All individuals should use this grievance procedure if they believe that the Board, its employees or agents have violated their rights guaranteed by the State or federal constitution, State or federal statute or Board policy.

The District will endeavor to respond to and resolve complaints without resorting to this grievance procedure and, if a complaint is filed, to address the complaint promptly and equitably

The policy provides for five levels of review: Informal, Principal, Superintendent, The Board and County Superintendent. The County Superintendent’s role in the grievance process was described as:

Level 5: County Superintendent

If the case falls within the jurisdiction of the County Superintendent of Schools, the decision of the Board may be appealed to the County Superintendent by filing a

written appeal within thirty (30) days after the final decision of the Board, pursuant to the Rules of School Controversy. (Emphasis added)

In her grievance filed February 9, 2000, Ms. Wallace wrote:

I am filing this grievance under Board Policy 5240P because I was not selected as the Secretary to the Superintendent of Schools, even though I met/exceeded the qualifications listed on the job description.

I also have reason to believe that I scored higher on the typing and spelling tests arranged by Job Service, computer skills, ability to deal with the public and general office skills listed as minimum qualifications of the position announcement. (2/9/2000 Grievance.)

Her grievance was based on District Policy 5120, which stated the “District shall hire the best qualified personnel, consistent with budget and staffing requirements . . .” She maintained that she was the best qualified applicant and, therefore, the hiring committee’s decision to offer the position was a violation of District policy. As a remedy for her grievance, she requested that the District disclose the rankings of the person offered the position “to prove the candidate rated higher than me,” increase her salary and benefits to an amount equal to the salary and benefits paid the new position, agree to transfer her to the position when the position became open, and pay her attorney fees. Superintendent Cameron denied the grievance.

Ms. Wallace appealed Superintendent Cameron’s decision to the District’s Board of Trustees. The Board reviewed the matter at its regular meeting on April 10, 2000, and denied the grievance. Ms. Wallace then filed her grievance with the County Superintendent on May 4, 2000. The County Superintendent granted the District’s motion to dismiss on the grounds that a County Superintendent does not have jurisdiction to review the hiring decisions of a school district.

Issue. Did the Dawson County Superintendent of Schools correctly conclude that the Glendive School District’s motion to dismiss should be granted because a County Superintendent of Schools does not have jurisdiction to review the hiring decisions of a School

District? Yes, there were no material facts in dispute and the District was entitled to a ruling in its favor as a matter of law. Not every decision of the Board of Trustees is subject to the review of a County Superintendent. For example, a school district’s hiring decision cannot be set aside by a County Superintendent

The County Superintendent correctly concluded she did not have the authority to override the District’s decision regarding who was the best-qualified applicant for the secretarial position. Determining who, among a group of people satisfying the minimum qualifications for a job, is “best qualified” is a subjective decision to be made by the employing school district. That exercise of discretion is not subject to review by County Superintendents, the State Superintendent or the Courts.

The fact that Ms. Wallace met the minimum qualifications for the position and scored the highest on a spelling and typing tests did not compel the District to hire her. District Policy 5120 established a subjective standard (i.e., “best qualified”) for District hiring decisions. Like all District hiring decisions, this decision was subject to review by the Trustees of the District, and the Trustees, in fact, reviewed it. Ms. Wallace received the review that she was entitled to under District policy.

If the County Superintendent had jurisdiction to hear Ms. Wallace’s appeal in this instance, the County Superintendent, rather than the Board of Trustees, would have the final authority to make the hiring decisions in a school district. That is not the law in Montana.

The Montana law that gives county superintendents the authority to hear “all matters of controversy” is a procedural statute, not a jurisdictional grant of authority to a county superintendent. Mont. Code Ann. §20-3-210. The State Superintendent has held consistently that not every disagreement that occurs in a school setting gives rise to the right to a hearing before a county superintendent. Consider:

Simply because a disagreement occurs in a school does not mean the school district, the county or the state must provide a contested case hearing to resolve it. Just as there must be a cause of action in District Court, there must be a constitutional interest at stake or a statutory right to a hearing before the dispute rises to the level of contested case. Bland v. Libby School District No. 4, OSPI 205-92, 12 Ed. Law 76, 78 (1993).

Unless a claimant has a case in controversy (contested case), the administrative process is not invoked and the county superintendent is without jurisdiction to hear the complaint and the complaint must be dismissed. To find that §20-3-210, MCA, confers unlimited jurisdiction on a county superintendent leads to absurd results. I cannot believe that the legislature intended to subject every decision of a board of trustees to judicial review. If the county superintendent must hear an appeal on every decision of a board of trustees, this would be the result. Althea Smith v. Board of Trustees, Judith Basin County School District No. 12, OSPI 200-91, 11 Ed. Law 65, 66 (1992).

This remains the position of this Superintendent.

The Montana Constitution in Article X, § 8 provides that “The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.” County Superintendents do not have the power to set aside trustees' lawful exercise of discretion. Hedges v. Lake County Transportation Committee, OSPI 219-93, 12 Ed. Law 170 (1993.) Montana statutory law specifically gives school trustees the discretion to hire administrative personnel, including secretaries. Mont. Code Ann. §20-3-324 (2).

Moreover, the District’s grievance policy recognized that the County Superintendent does not have unlimited jurisdiction. The policy specifically states that if “the case falls within the jurisdiction of the County Superintendent of Schools,” a party aggrieved by a decision of the Board of Trustees may appeal to the County Superintendent. The corollary is that if, as in this case, the County Superintendent is without jurisdiction, the Board’s decision stands and there is no “Level 5” review.

The County Superintendent correctly concluded that she did not have jurisdiction to review a hiring decision so there was no need for her to consider the substantive issue Ms. Wallace raised. In

an effort to avoid unnecessary further litigation of the “best qualified” issue, this Superintendent notes that if the County Superintendent had incorrectly reached the issue of who was “best qualified,” the outcome in this case would be the same. The record shows that the District had substantial credible evidence to support its hiring decision. As one of the four minimum qualifications, typing and spelling ability made up only part of the qualifications that the District was looking for in an applicant. Spelling and typing were not the only benchmarks of performance and the highest score on tests of those skills do not establish one applicant is inherently more qualified than the next. Accepting as fact Ms. Wallace’s allegation that her typing and spelling scores were higher than the person hired does not establish she was the “best qualified” for the position.

CONCLUSION:

The Dawson County Superintendent correctly concluded that she did not have jurisdiction to review the Glendive School District’s hiring decision and she correctly granted the District’s motion to dismiss. The Order is affirmed.

DATED this 3rd day of December 2001

/s/ LINDA McCULLOCH
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 3rd day of December 2001, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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